

IC 28-1-29**Chapter 29. Debt Management Companies**

28-1-29-0.5	Inapplicability; attorneys; depository financial institutions; third-party bill paying services
28-1-29-1	Definitions
28-1-29-2	Administration of chapter
28-1-29-3	License required; persons operating in Indiana; evidence of compliance; fees; violations; renewal; tax warrant list
28-1-29-3.1	Change in control of licensee; application to department; time frame for department's decision; conditions for approval; duty of licensee to report transfer of securities; director's discretion to require new license
28-1-29-4	Suspension or revocation of license; order to show cause; order of suspension or revocation; relinquishment of license; existing contracts; emergency order for revocation
28-1-29-4.1	Failure to file renewal application or pay renewal fee; revocation or suspension of license
28-1-29-4.5	Collection agencies or process servers; licenses; restriction
28-1-29-4.6	Repealed
28-1-29-5	License application; findings by the department; felonies; financial statements; denial; hearing
28-1-29-5.5	Use of NMLSR in department's licensing system; reporting of information to NMLSR; confidentiality; director's authority to enter agreements; waiver of privilege; processing fee; electronic records
28-1-29-6	Surety bond; requirements; amount; renewal; termination; liability; notices
28-1-29-7	Repealed
28-1-29-7.5	Felonies; civil actions; enforcement actions; notice to department
28-1-29-7.7	Budget analysis and plan; written statement to debtor; creditor's reduction of amount owed; disclosure of tax implications
28-1-29-8	Agreement between licensee and debtor; contents; delivery of electronic record; debtor's right to terminate; notice to creditors; payments; budget analysis; term of agreement; other business operations; other products and services; toll free communication system; good faith required
28-1-29-8	Agreement between licensee and debtor; contents; delivery of electronic record; debtor's right to terminate; notice to creditors; payments; budget analysis; supplemental plan for certain debtors; term of agreement; other business operations; toll free communication system; good faith required
28-1-29-8.3	Fees and charges; plan, written agreement, and payment to creditor required; set up fee; monthly service fee; close-out fee; department approval for additional charges; fees not considered debt
28-1-29-8.6	Repealed
28-1-29-8.8	Debtor's failure to make payment; cancellation of agreement; letter of continuation; return of money to contract debtor
28-1-29-9	Trust account; separate account for Indiana contract debtors required; commingling with funds of nonresidents with approval of director; requirements and restrictions; required balance; reconciliation procedures; embezzlement; relocating account; signatories; monthly accountings; completion or termination of contract
28-1-29-9.5	Prohibited acts; unauthorized practice of law; compensation prohibited
28-1-29-9.7	Advertising
28-1-29-10	Repealed
28-1-29-10.5	Record keeping and retention; examinations and investigations; payment of costs; court order compelling compliance; confidentiality; department's investigatory and enforcement authority; cooperative regulatory agreements; examination of vendors
28-1-29-11	Impounding books, records, and accounts
28-1-29-12	Repealed
28-1-29-13	Enforcement by the department; civil penalties; department's recovery of costs; factors for determining amount of civil penalty; violation a Class A misdemeanor
28-1-29-14	Review of department decisions; applicability of laws governing administrative orders and procedures; venue
28-1-29-15	Providing materials and agreements electronically; consumer's consent

	required; disclosures through Internet web site; debtor's right to request written copy
28-1-29-16	Disclosures and documents to be in English; translation required if another language used
28-1-29-17	Soliciting or accepting contributions from debtors prohibited
28-1-29-18	Delegation of duties; liability of licensee; violations by lead generators

IC 28-1-29-0.5 Inapplicability; attorneys; depository financial institutions; third-party bill paying services

Sec. 0.5. (a) This chapter does not apply to:

- (1) an attorney at law authorized to practice in Indiana; or
- (2) persons under the supervision and control of an attorney at law authorized to practice in Indiana;

to the extent the attorney's debt management services are incidental to the attorney's practice of law.

(b) This chapter does not apply to a depository financial institution (as defined in IC 28-1-1-6).

(c) This chapter does not apply to a third-party bill paying service with which the customer contracts solely for the customer's convenience of paying routine bills, in an arrangement in which the customer retains full control over all funds deposited. The types of payments made by a bill paying service are exempt from this chapter as long as the company's actions are not an attempt, as determined by the director, to circumvent limitations under this chapter.

As added by P.L.35-2010, SEC.118. Amended by P.L.216-2013, SEC.19.

IC 28-1-29-1 Definitions

Sec. 1. The following words, when used in this chapter, shall have the meaning ascribed to them unless the context clearly requires a different meaning:

- (1) "Person" includes individuals, sole proprietorships, partnerships, limited liability companies, trusts, joint ventures, corporations, unincorporated organizations, other entities, and their affiliates, however organized.
- (2) "Debt management company" is any person doing business as a budget counseling, credit counseling, debt management, or debt pooling service or holding the person out, by words of similar import, as providing services to debtors in the management of their debts, and having a written agreement with the debtor to disburse money or anything of value. The term includes the following:
 - (A) A person that simply holds any money, funds, check, personal check, money order, personal money order, draft, or any other instrument for the transmission of money.
 - (B) A person or an entity known as a "budget service company".

The term does not include a person that provides debt settlement services (as defined in IC 24-5-15-2.5).

- (3) "License" means a license issued under the provisions of this chapter.
- (4) "Licensee" means any person to whom a license has been issued pursuant to the provisions of this chapter.
- (5) "Contract debtor" means a debtor who has entered into a written agreement with a licensee.
- (6) "Debt" means an obligation arising out of personal, family, or household use.
- (7) "Debtor" means an individual whose principal debts and obligations arise out of personal, family, or household use and not out of business purpose transactions.
- (8) "Department" means the members of the department of financial institutions.
- (9) "Indiana contract debtor" means a contract debtor whose principal residence is located in Indiana.

(10) "Affiliate" means a person that, directly or indirectly, through one (1) or more intermediaries:

- (A) controls;
- (B) is controlled by; or
- (C) is under common control with;

a person subject to this chapter.

(11) "Fee" means the total amount of money charged to a contract debtor by a debt management company for the administration of a debt management plan.

(12) "Plan" means a written debt repayment program in which a debt management company furnishes debt management services to a contract debtor and that includes a schedule of payments to be made by or on behalf of the contract debtor and used to pay debts owed by the contract debtor.

(13) "Principal amount of the debt" means the total amount of a debt at the time the contract debtor enters into an agreement.

(14) "Agreement" means an agreement between a debt management company and a debtor for the performance of debt management services.

(15) "Trust account" means an account held by a licensee that is:

- (A) established in a bank insured by the Federal Deposit Insurance Corporation;
- (B) separate from other accounts held by the licensee;
- (C) except as otherwise permitted under section 9(a) of this chapter, maintained specifically for the benefit of the licensee's Indiana contract debtors;
- (D) designated as a trust account indicating that the money in the trust account is not the money of the licensee; and
- (E) used to hold money of one (1) or more Indiana contract debtors for disbursement to creditors of the Indiana contract debtors.

(16) "Month" means a calendar month.

(17) "Day" means a calendar day.

(18) "Concessions" means assent to repayment of a debt on terms more favorable to a contract debtor than the terms of the contract between that debtor and a creditor.

(19) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing.

(20) "Control of a related interest" refers to a situation in which a person, directly or indirectly, or through or in concert with one (1) or more other persons, possesses any of the following:

- (A) The ownership of, control of, or power to vote at least twenty-five percent (25%) of the voting securities of a related interest.
- (B) The control in any manner of the election of a majority of the directors of a related interest.
- (C) The power to exercise a controlling influence over the management or policies of a related interest. For purposes of this clause, a person is presumed to have control, including the power to exercise a controlling influence over the management or policies of the related interest, if the person:
 - (i) is an executive officer or a director of the related interest and directly or indirectly owns, controls, or has the power to vote more than ten percent (10%) of any class of voting securities of the related interest; or
 - (ii) directly or indirectly owns, controls, or has the power to vote more than ten percent (10%) of any class of voting securities of the related interest and no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities.

(21) "Lead generator" means a person that, in the regular course of business:

- (A) supplies a debt management company with the name of a potential contract debtor;
- (B) directs an individual to contact or communicate with a debt management

company; or

(C) otherwise refers a debtor to a debt management company.

Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6. As amended by P.L.14-1992, SEC.107; P.L.42-1993, SEC.46; P.L.196-1996, SEC.1; P.L.90-2008, SEC.27; P.L.35-2010, SEC.119; P.L.89-2011, SEC.36; P.L.216-2013, SEC.20.

IC 28-1-29-2 Administration of chapter

Sec. 2. The department shall adopt such rules and regulations as it deems advisable for the administration of this chapter, and to provide such forms and procedures as it determines to be necessary to carry out the provisions of such chapter.

Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6. As amended by P.L.42-1993, SEC.47.

IC 28-1-29-3 License required; persons operating in Indiana; evidence of compliance; fees; violations; renewal; tax warrant list

Sec. 3. (a) No person shall operate a debt management company in Indiana without having obtained a license from the department. For purposes of this section, a person is operating in Indiana if:

- (1) the person or any of the person's employees or agents are located in Indiana; or
- (2) the person:
 - (A) contracts with debtors who are residents of Indiana; or
 - (B) solicits business from residents of Indiana by advertisements or other communications sent or delivered through any of the following means:
 - (i) Mail.
 - (ii) Personal delivery.
 - (iii) Telephone.
 - (iv) Radio.
 - (v) Television.
 - (vi) The Internet or other electronic communications.
 - (vii) Any other means of communication.
- (b) The director may request evidence of compliance with this section at:
 - (1) the time of application;
 - (2) the time of renewal of a license; or
 - (3) any other time considered necessary by the director.
- (c) For purposes of subsection (b), evidence of compliance with this section may include:
 - (1) criminal background checks, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation for any individual described in section 5(b)(2), 5(b)(3), or 5(b)(4) of this chapter;
 - (2) credit histories; and
 - (3) other background checks considered necessary by the director.

If the director requests a national criminal history background check under subdivision (1) for an individual described in that subdivision, the director shall require the individual to submit fingerprints to the department or to the state police department, as appropriate, at the time evidence of compliance is requested under subsection (b). The individual to whom the request is made shall pay any fees or costs associated with the fingerprints and the national criminal history background check. The national criminal history background check may be used by the director to determine the individual's compliance with this section. The director or the department may not release the results of the national criminal history background check to any private entity.

(d) The fee for a license or renewal of a license shall be fixed by the department under IC 28-11-3-5 and shall be nonrefundable. The department may impose a fee under IC 28-11-3-5 for each day that a renewal fee and any related documents that are required to be submitted with a renewal application are delinquent.

(e) If a person knowingly acts as a debt management company in violation of this chapter, any agreement the person has made under this chapter is void and the debtor under the agreement is not obligated to pay any fees. If the debtor has paid any amounts to the person, the debtor, or the department on behalf of the debtor, may recover the payment from the person that violated this section.

(f) A license issued under this section, except in a transaction approved under section 3.1 of this chapter, is not assignable or transferable. In order to remain in force, a license issued under this section must be renewed every year in the manner prescribed by the director of the department. The director of the department shall prescribe the form of the renewal application. In order to be accepted for processing, a renewal application must be accompanied by the following:

(1) The license renewal fee imposed under subsection (d).

(2) The licensee's most recent audited financial statements covering the licensee's immediately preceding fiscal year, as prepared by an independent certified public accountant in compliance with the requirements set forth in section 5(d) of this chapter. If the licensee's financial statements for the immediately preceding fiscal year are not available at the time of renewal, the licensee has one hundred twenty (120) days after the end of the immediately preceding fiscal year to file the financial statements.

(3) All other information and documents requested by the director of the department.

(g) If the department of state revenue notifies the department that a person is on the most recent tax warrant list, the department shall not issue or renew the person's license until:

(1) the person provides to the department a statement from the department of state revenue that the person's tax warrant has been satisfied; or

(2) the department receives a notice from the commissioner of the department of state revenue under IC 6-8.1-8-2(k).

Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6. As amended by P.L.42-1993, SEC.48; P.L.172-1997, SEC.18; P.L.63-2001, SEC.12 and P.L.134-2001, SEC.13; P.L.10-2006, SEC.33 and P.L.57-2006, SEC.33; P.L.213-2007, SEC.44; P.L.217-2007, SEC.42; P.L.90-2008, SEC.28; P.L.35-2010, SEC.120; P.L.89-2011, SEC.37; P.L.172-2011, SEC.132; P.L.216-2013, SEC.21.

IC 28-1-29-3.1 Change in control of licensee; application to department; time frame for department's decision; conditions for approval; duty of licensee to report transfer of securities; director's discretion to require new license

Sec. 3.1. (a) As used in this section, "control" means possession of the power directly or indirectly to:

(1) direct or cause the direction of the management or policies of a licensee, whether through the beneficial ownership of voting securities, by contract, or otherwise; or

(2) vote at least twenty-five percent (25%) of the voting securities of a licensee, whether the voting rights are derived through the beneficial ownership of voting securities, by contract, or otherwise.

(b) An organization or an individual acting directly, indirectly, or through or in concert with one (1) or more other organizations or individuals may not acquire control of any licensee unless the department has received and approved an application for change in control. The department has not more than one hundred twenty (120) days after receipt of an application to issue a notice approving the proposed change in control. The application must contain the name and address of the organization, individual, or individuals who propose to acquire control and any other information required by the director.

(c) The period for approval under subsection (b) may be extended:

(1) in the discretion of the director for an additional thirty (30) days; and

(2) not more than two (2) additional times for not more than forty-five (45) days each time if:

(A) the director determines that the organization, individual, or individuals who propose to acquire control have not submitted substantial evidence of the qualifications described in subsection (d);

(B) the director determines that any material information submitted is substantially inaccurate; or

(C) the director has been unable to complete the investigation of the organization, individual, or individuals who propose to acquire control because of any delay caused by or the inadequate cooperation of the organization, individual, or individuals.

(d) The department shall issue a notice approving the application only after it is satisfied that both of the following apply:

(1) The organization, individual, or individuals who propose to acquire control are qualified by competence, experience, character, and financial responsibility to control and operate the licensee in a legal and proper manner.

(2) The interests of the owners and creditors of the licensee and the interests of the public generally will not be jeopardized by the proposed change in control.

(e) The director may determine, in the director's discretion, that subsection (b) does not apply to a transaction if the director determines that the direct or beneficial ownership of the licensee will not change as a result of the transaction.

(f) The president or other chief executive officer of a licensee shall report to the director any transfer or sale of securities of the licensee that results in direct or indirect ownership by a holder or an affiliated group of holders of at least ten percent (10%) of the outstanding securities of the licensee. The report required by this subsection must be made not later than ten (10) days after the transfer of the securities on the books of the licensee.

(g) Depending on the circumstances of the transaction, the director may reserve the right to require the organization, individual, or individuals who propose to acquire control of a licensee to apply for a new license under section 3 of this chapter, instead of acquiring control of the licensee under this section.

As added by P.L.89-2011, SEC.38. Amended by P.L.6-2012, SEC.193.

IC 28-1-29-4 Suspension or revocation of license; order to show cause; order of suspension or revocation; relinquishment of license; existing contracts; emergency order for revocation

Sec. 4. (a) The department may issue to a licensee an order to show cause why the licensee's license should not be revoked or suspended for a period determined by the department.

(b) An order issued under subsection (a) must:

(1) include:

(A) a statement of the place, date, and time for a meeting with the department, which date may not be less than ten (10) days from the date of the order;

(B) a description of the action contemplated by the department; and

(C) a statement of the facts or conduct supporting the issuance of the order; and

(2) be accompanied by a notice stating that the licensee is entitled to:

(A) a reasonable opportunity to be heard; and

(B) show the licensee's compliance with all lawful requirements for retention of the license;

at the meeting described in subdivision (1)(A).

(c) After the meeting described in subsection (b)(1)(A), the department may revoke or suspend the license if the department finds that:

(1) the licensee has repeatedly and willfully violated:

(A) this chapter or any applicable rule, order, or guidance document adopted or issued by the department; or

(B) any other state or federal law, regulation, or rule applicable to debt management

companies;

(2) the licensee does not meet the licensing qualifications set forth in section 5 of this chapter;

(3) the licensee obtained the license for the benefit of, or on behalf of, a person who does not qualify for the license;

(4) the licensee knowingly or intentionally made material misrepresentations to, or concealed material information from, the department; or

(5) facts or conditions exist that, had they existed at the time the licensee applied for the license, would have been grounds for the department to deny the issuance of the license.

(d) Whenever the department revokes or suspends a license, the department shall enter an order to that effect and notify the licensee of:

(1) the revocation or suspension;

(2) if a suspension has been ordered, the duration of the suspension;

(3) the procedure for appealing the revocation or suspension under IC 4-21.5-3-6; and

(4) any other terms and conditions that apply to the revocation or suspension.

Not later than five (5) days after the entry of the order, the department shall deliver to the licensee a copy of the order and the findings supporting the order.

(e) Any person holding a license to operate a debt management company may relinquish the license by notifying the department in writing of the relinquishment. However, a relinquishment under this subsection does not affect the person's liability for acts previously committed and coming within the scope of this chapter.

(f) If the director determines it to be in the public interest, the director may pursue revocation of a license of a licensee that has relinquished the license under subsection (e).

(g) If a person's license is revoked, suspended, or relinquished, the revocation, suspension, or relinquishment does not impair or affect any obligation owed by any person under any existing agreement or contract.

(h) If the director of the department has just cause to believe an emergency exists from which it is necessary to protect the interests of the public, the director may proceed with the revocation of a license through an emergency or another temporary order under IC 4-21.5-4. *Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6. As amended by P.L.42-1993, SEC.49; P.L.176-1996, SEC.15; P.L.196-1996, SEC.2; P.L.80-1998, SEC.10; P.L.213-2007, SEC.45; P.L.217-2007, SEC.43; P.L.35-2010, SEC.121; P.L.27-2012, SEC.71; P.L.186-2015, SEC.32.*

IC 28-1-29-4.1 Failure to file renewal application or pay renewal fee; revocation or suspension of license

Sec. 4.1. (a) A license issued by the department under this chapter shall be revoked or suspended by the department if the licensee fails to:

(1) file any renewal application prescribed by the director; or

(2) pay any license renewal fee described under section 3 of this chapter;

within sixty (60) days after the date the renewal is due.

(b) A person whose license is revoked or suspended under this section may:

(1) pay all delinquent fees and apply for reinstatement of the license; or

(2) appeal the revocation or suspension to the department for an administrative review under IC 4-21.5-3.

Pending the decision resulting from a hearing under IC 4-21.5-3 concerning a license revocation or suspension, the license remains in force.

As added by P.L.176-1996, SEC.16. Amended by P.L.35-2010, SEC.122; P.L.89-2011, SEC.39.

IC 28-1-29-4.5 Collection agencies or process servers; licenses; restriction

Sec. 4.5. After August 31, 1981, the department may not issue a license to any person who

is an employee of, owner of, or affiliated in any way with a collection agency or a process serving business. Any person who was granted a license before September 1, 1981, is not affected by the restriction imposed in this section.

As added by Acts 1981, P.L.256, SEC.1. Amended by P.L.42-1993, SEC.50.

IC 28-1-29-4.6 Repealed

As added by Acts 1981, P.L.256, SEC.2. Amended by P.L.42-1993, SEC.51. Repealed by P.L.196-1996, SEC.5.

IC 28-1-29-5 License application; findings by the department; felonies; financial statements; denial; hearing

Sec. 5. (a) Every person doing business as a debt management company shall make application to the department for a license to engage in such business. Such application shall be in the form prescribed by the director and shall contain such information as the director may require.

(b) The department may not issue a license unless the department finds that the financial responsibility, character, and fitness of:

- (1) the applicant and any significant affiliate of the applicant;
- (2) each executive officer, director, or manager of the applicant, or any other individual having a similar status or performing a similar function for the applicant;
- (3) if known, each person directly or indirectly owning of record or owning beneficially at least ten percent (10%) of the outstanding shares of any class of equity security of the applicant; and
- (4) each of the applicant's:
 - (A) employees; or
 - (B) agents;authorized to initiate transactions involving the trust account required under section 9 of this chapter;

warrant belief that the business will be operated honestly and fairly under this chapter. The department is entitled to request evidence of an applicant's financial responsibility, character, and fitness.

(c) An application submitted under this section must indicate whether any individuals described in subsection (b)(2), (b)(3), or (b)(4):

- (1) are, at the time of the application, under indictment for a felony under Indiana law or the laws of any other jurisdiction; or
- (2) have been convicted of a felony under Indiana law or the laws of any other jurisdiction.

(d) Unless waived upon written request to and approval by the director, an application submitted to the department under this section must include copies of the applicant's audited financial statements for the applicant's most recently concluded fiscal year and, if available, for the applicant's two (2) fiscal years immediately preceding the applicant's most recently concluded fiscal year, including a:

- (1) balance sheet;
- (2) statement of income or loss;
- (3) statement of changes in shareholder equity; and
- (4) statement of changes in financial position.

A financial statement required to be submitted under this subsection must be prepared by an independent certified public accountant authorized to do business in the United States in accordance with AICPA Statements on Standards for Accounting and Review Services (SSARS).

(e) The department may deny an application under this section if the director of the department determines that the application was submitted for the benefit of, or on behalf of, a person who does not qualify for a license.

(f) Upon written request, an applicant is entitled to a hearing under IC 4-21.5 on the question of the qualifications of the applicant for a license.

Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6. As amended by P.L.42-1993, SEC.52; P.L.80-1998, SEC.11; P.L.10-2006, SEC.34 and P.L.57-2006, SEC.34; P.L.213-2007, SEC.46; P.L.217-2007, SEC.44; P.L.90-2008, SEC.29; P.L.35-2010, SEC.123; P.L.216-2013, SEC.22.

IC 28-1-29-5.5 Use of NMLSR in department's licensing system; reporting of information to NMLSR; confidentiality; director's authority to enter agreements; waiver of privilege; processing fee; electronic records

Sec. 5.5. (a) As used in this section, "Nationwide Multistate Licensing System and Registry" (or "Nationwide Mortgage Licensing System and Registry" or "NMLSR") means a multistate licensing system owned and operated by the State Regulatory Registry, LLC, or by any successor or affiliated entity, for the licensing and registration of creditors, mortgage loan originators, and other mortgage or financial services entities and their employees and agents. The term includes any other name or acronym that may be assigned to the system by the State Regulatory Registry, LLC, or by any successor or affiliated entity.

(b) Subject to subsection (g), the director may designate the NMLSR to serve as the sole entity responsible for:

- (1) processing applications and renewals for licenses under this chapter;
- (2) issuing unique identifiers for licensees and entities exempt from licensing under this chapter; and
- (3) performing other services that the director determines are necessary for the orderly administration of the department's licensing system under this chapter.

(c) Subject to the confidentiality provisions contained in IC 5-14-3 and this section, the director shall regularly report significant or recurring violations of this chapter to the NMLSR.

(d) Subject to the confidentiality provisions contained in IC 5-14-3 and this section, the director may report complaints received regarding licensees under this chapter to the NMLSR.

(e) The director may report publicly adjudicated licensure actions against a licensee to the NMLSR.

(f) The director shall establish a process by which licensees may challenge information reported to the NMLSR by the department.

(g) The director's authority to designate the NMLSR under subsection (b) is subject to the following:

- (1) Information stored in the NMLSR is subject to the confidentiality provisions of IC 5-14-3. A person may not:
 - (A) obtain information from the NMLSR, unless the person is authorized to do so by statute;
 - (B) initiate any civil action based on information obtained from the NMLSR if the information is not otherwise available to the person under any other state law; or
 - (C) initiate any civil action based on information obtained from the NMLSR if the person could not have initiated the action based on information otherwise available to the person under any other state law.
- (2) Documents, materials, and other forms of information in the control or possession of the NMLSR that are confidential under state or federal law and that are:
 - (A) furnished by the director, the director's designee, or a licensee; or
 - (B) otherwise obtained by the NMLSR;are confidential and privileged by law and are not subject to inspection under IC 5-14-3, subject to subpoena, subject to discovery, or admissible in evidence in any civil action. However, the director may use the documents, materials, or other

information available to the director in furtherance of any action brought in connection with the director's duties under this chapter.

(3) Disclosure of documents, materials, and information:

(A) to the director; or

(B) by the director;

under this subsection does not result in a waiver of any applicable privilege or claim of confidentiality with respect to the documents, materials, or information.

(4) Information provided to the NMLSR is subject to IC 4-1-11.

(5) This subsection does not limit or impair a person's right to:

(A) obtain information;

(B) use information as evidence in a civil action or proceeding; or

(C) use information to initiate a civil action or proceeding;

if the information may be obtained from the director or the director's designee under any law.

(6) The requirements under any federal law or IC 5-14-3 regarding the privacy or confidentiality of any information or material provided to the NMLSR, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the NMLSR. The information and material may be shared with all state and federal regulatory officials with financial services industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or IC 5-14-3.

(7) For purposes of this section, the director may enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, or other associations representing governmental agencies, as established by rule or order of the director.

(8) Information or material that is subject to a privilege or confidentiality under subdivision (6) is not subject to:

(A) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(B) subpoena, discovery, or admission into evidence in any private civil action or administrative process, unless with respect to any privileged information or material held by the NMLSR, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.

(9) Any provision of IC 5-14-3 that concerns the disclosure of:

(A) confidential supervisory information; or

(B) any information or material described in subdivision (6);

and that is inconsistent with subdivision (6) is superseded by this section.

(10) This section does not apply with respect to information or material that concerns the employment history of, and publicly adjudicated disciplinary and enforcement actions against, a person described in section 5(b)(2), 5(b)(3), or 5(b)(4) of this chapter and that is included in the NMLSR for access by the public.

(11) The director may require a licensee required to submit information to the NMLSR to pay a processing fee considered reasonable by the director. In determining whether the NMLSR processing fee is reasonable, the director shall:

(A) require review of; and

(B) make available;

the audited financial statements of the NMLSR.

(12) Notwithstanding any other provision of law, any:

(A) application, renewal, or other form or document that:

(i) relates to licenses issued under this chapter; and

(ii) is made or produced in an electronic format;

(B) document filed as an electronic record in a multistate automated repository established and operated for the licensing or registration of financial services entities and their employees; or

(C) electronic record filed through the NMLSR;

is considered a valid original document when reproduced in paper form by the department.

As added by P.L.137-2014, SEC.24. Amended by P.L.73-2016, SEC.21.

IC 28-1-29-6 Surety bond; requirements; amount; renewal; termination; liability; notices

Sec. 6. (a) Each application for a license must be accompanied by proof that the applicant has executed a surety bond in accordance with this section.

(b) A surety bond issued under this section must:

(1) be in a form prescribed by the director;

(2) be in effect during the term of the license issued under this chapter;

(3) remain in effect during the two (2) years after the licensee ceases offering debt management services to individuals in Indiana;

(4) be payable to the department for the benefit of:

(A) the state; and

(B) individuals who reside in Indiana when they agree to receive debt management services from the licensee;

(5) be in an amount equal to:

(A) fifty thousand dollars (\$50,000), in the case of an initial surety bond issued under this section; or

(B) the amount prescribed under subsection (d), beginning with the first renewal of a license under this chapter;

(6) be issued by a bonding, surety, or insurance company authorized to do business in Indiana and rated at least "A-" by at least one (1) nationally recognized investment rating service; and

(7) have payment conditioned upon the licensee's or any of the licensee's employees' or agents' noncompliance with or violation of this chapter or other applicable federal or state laws or regulations.

(c) The director may adopt rules or guidance documents with respect to the requirements for a surety bond as necessary to accomplish the purposes of this chapter.

(d) Beginning with the first renewal of a license under this chapter, each year that a licensee continues to offer debt management services to individuals in Indiana, the licensee shall file a new or an additional surety bond in an amount that ensures that the licensee's surety bond under this section is equal to the greater of the following:

(1) fifty thousand dollars (\$50,000); or

(2) the average of the highest daily balance of funds held in trust for Indiana residents for each month during the licensee's most recently concluded fiscal year, not to exceed one hundred thousand dollars (\$100,000).

(e) If the principal amount of a surety bond required under this section is reduced by payment of a claim or judgment, the licensee for whom the bond is issued shall immediately notify the director of the reduction and, not later than thirty (30) days after notice by the director, file a new or an additional surety bond in an amount set by the director. The amount of the new or additional bond set by the director must be at least the amount of the bond before payment of the claim or judgment.

(f) If for any reason a surety terminates a bond issued under this section, the licensee shall immediately notify the department and file a new surety bond in an amount as prescribed in subsection (b)(5).

(g) Cancellation of a surety bond issued under this section does not affect any liability incurred or accrued during the period when the surety bond was in effect.

(h) The director may obtain satisfaction from a surety bond issued under this section if the director incurs expenses, issues a final order, or recovers a final judgment under this chapter.

(i) Notices required under this section must be in writing and delivered by certified mail, return receipt requested and postage prepaid, or by overnight delivery using a nationally recognized carrier.

Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6. As amended by Acts 1981, P.L.256, SEC.3; P.L.42-1993, SEC.53; P.L.35-2010, SEC.124; P.L.216-2013, SEC.23.

IC 28-1-29-7 Repealed

Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6. Repealed by P.L.35-2010, SEC.209.

IC 28-1-29-7.5 Felonies; civil actions; enforcement actions; notice to department

Sec. 7.5. (a) This section applies if, after a person has been issued a license or renewal license under this chapter, any individuals described in section 5(b)(2), 5(b)(3), or 5(b)(4) of this chapter have been convicted of a felony under Indiana law or the laws of any other jurisdiction.

(b) If this section applies, the licensee shall provide to the department the information required under section 5(c) of this chapter:

- (1) not later than thirty (30) days after any person described in subsection (a) has been convicted of the felony; or
- (2) if the licensee's next license renewal fee under section 3(d) of this chapter is due before the date described in subdivision (1), along with the licensee's next license renewal fee under section 3(d) of this chapter.

(c) Not later than thirty (30) days after a licensee has been served with notice of a civil action that is for the violation of this chapter by the licensee (or by an employee or agent of the licensee) and that is brought by or on behalf of a debtor who resides or resided in Indiana on:

- (1) the date an agreement that is the subject of the civil action was entered into; or
- (2) the date the civil action is filed;

the licensee shall provide written notice of the civil action to the department.

(d) Not later than thirty (30) days after a licensee receives notice of any enforcement action initiated against the licensee (or an employee or agent of the licensee) by a federal or state regulatory or law enforcement agency, the licensee shall notify the director in writing of the notice received.

As added by P.L.213-2007, SEC.47; P.L.217-2007, SEC.45. Amended by P.L.90-2008, SEC.30; P.L.35-2010, SEC.125; P.L.42-2011, SEC.62; P.L.216-2013, SEC.24.

IC 28-1-29-7.7 Budget analysis and plan; written statement to debtor; creditor's reduction of amount owed; disclosure of tax implications

Sec. 7.7. (a) A licensee may not furnish debt management services to a debtor unless:

- (1) the licensee has prepared a budget analysis; and
- (2) if the debtor is to make regular, periodic payments, the licensee:
 - (A) has prepared a plan for the debtor;
 - (B) has made a determination, based on the licensee's analysis of the information provided by the debtor and otherwise available to the licensee, that the plan is suitable for the debtor and the debtor will be able to meet the payment obligations under the plan; and
 - (C) believes that each creditor of the debtor listed as a participating creditor in the plan will accept payment of the debtor's debts as provided in the plan.

(b) Before a debtor enters into an agreement with a licensee to engage in a plan, the licensee shall:

- (1) provide the debtor with a copy of the budget analysis and plan required by subsection (a) in a form that identifies the licensee and that the debtor may keep whether or not the debtor enters into the agreement;
- (2) inform the debtor of the availability, at the debtor's option, of assistance provided through a toll free communication system or in person, where reasonably available to residents in Indiana, regarding the budget analysis and plan required by subsection (a); and
- (3) with respect to all creditors identified by the debtor or otherwise known by the licensee to be creditors of the debtor, provide the debtor with a list of:
 - (A) creditors that the licensee expects to participate in the plan and grant concessions;
 - (B) creditors that the licensee expects to participate in the plan but not grant concessions; and
 - (C) creditors that the licensee expects not to participate in the plan.

(c) Before a debtor enters into an agreement with a licensee, the licensee shall, in a written form that is provided to the debtor separately, that contains no other information, and that the debtor may keep whether or not the debtor enters into the agreement, provide the following information to the debtor in clear and conspicuous type, surrounded by black lines:

"IMPORTANT INFORMATION FOR YOU TO CONSIDER

- (1) Debt management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.
- (2) We may receive compensation for our services from your creditors.

(Name and business address of licensee)".

(d) If during the term of a debt management agreement a creditor that is a participating creditor in the plan agrees to reduce the amount owed by the debtor, the licensee must, not later than fourteen (14) days after the date the creditor agrees to the reduction, provide the following disclosure in clear and conspicuous type, surrounded by black lines:

"IMPORTANT INFORMATION FOR YOU TO CONSIDER

- (1) (Description of the terms of the reduction).
- (2) Reduction of debt as described in item (1) above may result in taxable income to you, even though you will not actually receive any money."

As added by P.L.35-2010, SEC.126. Amended by P.L.89-2011, SEC.40; P.L.27-2012, SEC.72; P.L.216-2013, SEC.25.

IC 28-1-29-8 Agreement between licensee and debtor; contents; delivery of electronic record; debtor's right to terminate; notice to creditors; payments; budget analysis; term of agreement; other business operations; other products and services; toll free communication system; good faith required

Note: This version of section effective until 7-1-2017. See also following version of this section, effective 7-1-2017.

Sec. 8. (a) An agreement between a licensee and a debtor must:

- (1) be in a written form;
- (2) be dated and signed by the licensee and the debtor;
- (3) include the name of the debtor and the address where the debtor resides;
- (4) include the name, business address, and telephone number of the licensee;
- (5) be delivered to the debtor immediately upon formation of the agreement; and
- (6) disclose the following:
 - (A) The services to be provided.
 - (B) The amount or method of determining the amount of all fees and charges,

individually itemized, to be paid by the debtor.

(C) The schedule of payments to be made by or on behalf of the debtor, including the amount of each payment, the date on which each payment is due, and an estimate of the date of the final payment.

(D) If a plan provides for regular periodic payments to creditors:

(i) each creditor of the debtor to which payment will be made, the amount owed to each creditor, and any concessions the licensee reasonably believes each creditor will offer; and

(ii) the schedule of expected payments to each creditor, including the amount of each payment and the date on which the payment will be made.

(E) Each creditor that the licensee believes will not participate in the plan and to which the licensee will not direct payment.

(F) The manner in which the licensee will comply with the licensee's obligations under section 9(k) of this chapter.

(G) That:

(i) the licensee may terminate the agreement for good cause, upon return of unexpended money of the debtor; and

(ii) the debtor may contact the department with any questions or complaints regarding the licensee.

(H) The address, telephone number, and Internet address or web site of the department.

(I) That the debtor has a right to terminate the agreement at any time without penalty (notwithstanding the close-out fee as permitted by section 8.3(d) of this chapter) or obligation.

(J) That the debtor authorizes any bank insured by the Federal Deposit Insurance Corporation in which the licensee or the licensee's agent has established a trust account to disclose to the department any financial records relating to the trust account.

(K) That the licensee shall notify the debtor within five (5) days after learning of a creditor's final decision to reject or withdraw from a plan under the agreement.

(b) For purposes of subsection (a)(5), delivery of an electronic record occurs when:

(1) the record is made available in a format in which the debtor may retrieve, save, and print the record; and

(2) the debtor is notified that the record is available.

(c) A debtor may exercise the debtor's right to terminate the agreement at any time without penalty (notwithstanding the close-out fee as permitted by section 8.3(d) of this chapter) or obligation, as described in subsection (a)(6)(I), by giving the licensee written or electronic notice, in which event:

(1) the licensee shall:

(A) refund all unexpended money that the licensee or the licensee's agent has received from or on behalf of the debtor for the reduction or satisfaction of the debtor's debt; and

(B) notify immediately in writing all creditors in the debt management plan of the cancellation by the contract debtor; and

(2) all powers of attorney granted by the debtor to the licensee are revoked and ineffective.

(d) A licensee's notice of a creditor's final decision to reject or withdraw from a plan under the agreement, as described in subsection (a)(6)(K) must include:

(1) the identity of the creditor; and

(2) a statement that the debtor has the right to modify or terminate the agreement.

(e) All creditors included in the plan must be notified of the contract debtor's and licensee's relationship.

(f) A licensee shall give to the contract debtor a dated receipt for each payment, at the

time of the payment, unless the payment is made by check, money order, or automated clearinghouse withdrawal as authorized by the contract debtor.

(g) A licensee may not enter into an agreement with a debtor unless a thorough, written budget analysis of the debtor indicates that the debtor can reasonably meet the payments required under a proposed plan. The following must be included in the budget analysis:

- (1) Documentation and verification of all income considered. All income verification must be dated not more than sixty (60) days before the completion of the budget analysis.
- (2) Monthly living expense figures, which must be reasonable for the particular family size and part of Indiana. If expenditure reductions are part of the planned budget for the debtor, details of the expected savings must be documented in the debtor's file and set forth in the budget provided to the debtor.
- (3) Documentation and verification, by a current credit bureau report, current debtor account statements, or direct documentation from the creditor, of monthly debt payments and balances to be paid outside the plan.
- (4) Documentation and verification, by a current credit bureau report, current debtor account statements, or direct documentation from the creditor, of the monthly debt payments and current balances to be paid through the plan.
- (5) The date of the budget analysis and the signature of the debtor.

(h) A licensee may not enter into an agreement with a debtor for a period longer than sixty (60) months.

(i) A licensee may provide services under this chapter in the same place of business in which another business is operating, or from which other products or services are sold, if the director issues a written determination that:

- (1) the operation of the other business; or
- (2) the sale of other products and services;

from the location in question is not contrary to the best interests of debtors.

(j) A licensee without a physical location in Indiana may:

- (1) solicit sales of; and
- (2) sell;

additional products and services to Indiana residents if the director issues a written determination that the proposed solicitation or sale is not contrary to the best interests of debtors.

(k) A licensee shall maintain a toll free communication system, staffed at a level that reasonably permits a contract debtor to speak to a counselor, debt specialist, or customer service representative, as appropriate, during ordinary business hours.

(l) A debt management company shall act in good faith in all matters under this chapter. *Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6. As amended by Acts 1981, P.L.256, SEC.4; P.L.42-1993, SEC.54; P.L.196-1996, SEC.3; P.L.63-2001, SEC.13 and P.L.134-2001, SEC.14; P.L.213-2007, SEC.48; P.L.217-2007, SEC.46; P.L.3-2008, SEC.220; P.L.90-2008, SEC.31; P.L.1-2009, SEC.148; P.L.35-2010, SEC.127; P.L.89-2011, SEC.41; P.L.27-2012, SEC.73; P.L.216-2013, SEC.26; P.L.186-2015, SEC.33; P.L.73-2016, SEC.22; P.L.85-2017, SEC.102.*

IC 28-1-29-8 Agreement between licensee and debtor; contents; delivery of electronic record; debtor's right to terminate; notice to creditors; payments; budget analysis; supplemental plan for certain debtors; term of agreement; other business operations; toll free communication system; good faith required

Note: This version of section effective 7-1-2017. See also preceding version of this section, effective until 7-1-2017.

Sec. 8. (a) An agreement between a licensee and a debtor must:

- (1) be in a written form;

- (2) be dated and signed by the licensee and the debtor;
- (3) include the name of the debtor and the address where the debtor resides;
- (4) include the name, business address, and telephone number of the licensee;
- (5) be delivered to the debtor immediately upon formation of the agreement; and
- (6) disclose the following:
 - (A) The services to be provided.
 - (B) The amount or method of determining the amount of all fees and charges, individually itemized, to be paid by the debtor.
 - (C) The schedule of payments to be made by or on behalf of the debtor, including the amount of each payment, the date on which each payment is due, and an estimate of the date of the final payment.
 - (D) If a plan provides for regular periodic payments to creditors:
 - (i) each creditor of the debtor to which payment will be made, the amount owed to each creditor, and any concessions the licensee reasonably believes each creditor will offer; and
 - (ii) the schedule of expected payments to each creditor, including the amount of each payment and the date on which the payment will be made.
 - (E) Each creditor that the licensee believes will not participate in the plan and to which the licensee will not direct payment.
 - (F) The manner in which the licensee will comply with the licensee's obligations under section 9(k) of this chapter.
 - (G) That:
 - (i) the licensee may terminate the agreement for good cause, upon return of unexpended money of the debtor; and
 - (ii) the debtor may contact the department with any questions or complaints regarding the licensee.
 - (H) The address, telephone number, and Internet address or web site of the department.
 - (I) That the debtor has a right to terminate the agreement at any time without penalty (notwithstanding the close-out fee as permitted by section 8.3(d) of this chapter) or obligation.
 - (J) That the debtor authorizes any bank insured by the Federal Deposit Insurance Corporation in which the licensee or the licensee's agent has established a trust account to disclose to the department any financial records relating to the trust account.
 - (K) That the licensee shall notify the debtor within five (5) days after learning of a creditor's final decision to reject or withdraw from a plan under the agreement.
- (b) For purposes of subsection (a)(5), delivery of an electronic record occurs when:
 - (1) the record is made available in a format in which the debtor may retrieve, save, and print the record; and
 - (2) the debtor is notified that the record is available.
- (c) A debtor may exercise the debtor's right to terminate the agreement at any time without penalty (notwithstanding the close-out fee as permitted by section 8.3(d) of this chapter) or obligation, as described in subsection (a)(6)(I), by giving the licensee written or electronic notice, in which event:
 - (1) the licensee shall:
 - (A) refund all unexpended money that the licensee or the licensee's agent has received from or on behalf of the debtor for the reduction or satisfaction of the debtor's debt; and
 - (B) notify immediately in writing all creditors in the debt management plan of the cancellation by the contract debtor; and
 - (2) all powers of attorney granted by the debtor to the licensee are revoked and ineffective.

(d) A licensee's notice of a creditor's final decision to reject or withdraw from a plan under the agreement, as described in subsection (a)(6)(K) must include:

- (1) the identity of the creditor; and
- (2) a statement that the debtor has the right to modify or terminate the agreement.

(e) All creditors included in the plan must be notified of the contract debtor's and licensee's relationship.

(f) A licensee shall give to the contract debtor a dated receipt for each payment, at the time of the payment, unless the payment is made by check, money order, or automated clearinghouse withdrawal as authorized by the contract debtor.

(g) A licensee may not enter into an agreement with a debtor unless the licensee does the following:

- (1) Conducts a thorough, written budget analysis of the debtor.
- (2) Determines, based on the analysis of the information provided by the debtor or otherwise available to the licensee, that:
 - (A) a debt management plan is a suitable solution for the debtor; and
 - (B) the debtor can reasonably meet the payments required under a proposed debt management plan.
- (3) If:
 - (A) the licensee has made a determination described in subdivision (2)(A); and
 - (B) the debtor's current monthly expense and debt payments exceed the debtor's net income;

establishes a written plan that supplements the debt management plan and specifies the manner by which it will be possible for the debtor to meet the payment obligations under a proposed debt management plan.

(h) A licensee may not enter into an agreement with a debtor for a period longer than sixty (60) months.

(i) A licensee may provide services under this chapter in the same place of business in which another business is operating, or from which other products or services are sold, if the director issues a written determination that:

- (1) the operation of the other business; or
- (2) the sale of other products and services;

from the location in question is not contrary to the best interests of debtors.

(j) A licensee without a physical location in Indiana may:

- (1) solicit sales of; and
- (2) sell;

additional products and services to Indiana residents if the director issues a written determination that the proposed solicitation or sale is not contrary to the best interests of debtors.

(k) A licensee shall maintain a toll free communication system, staffed at a level that reasonably permits a contract debtor to speak to a counselor, debt specialist, or customer service representative, as appropriate, during ordinary business hours.

(l) A debt management company shall act in good faith in all matters under this chapter.

Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6. As amended by Acts 1981, P.L.256, SEC.4; P.L.42-1993, SEC.54; P.L.196-1996, SEC.3; P.L.63-2001, SEC.13 and P.L.134-2001, SEC.14; P.L.213-2007, SEC.48; P.L.217-2007, SEC.46; P.L.3-2008, SEC.220; P.L.90-2008, SEC.31; P.L.1-2009, SEC.148; P.L.35-2010, SEC.127; P.L.89-2011, SEC.41; P.L.27-2012, SEC.73; P.L.216-2013, SEC.26; P.L.186-2015, SEC.33; P.L.73-2016, SEC.22; P.L.85-2017, SEC.102; P.L.159-2017, SEC.34.

IC 28-1-29-8.3

Fees and charges; plan, written agreement, and payment to creditor required; set up fee; monthly service fee; close-out fee; department approval for additional charges; fees not considered debt

Sec. 8.3. (a) Except as otherwise permitted by this section, a licensee may not:

- (1) impose, directly or indirectly, a fee or other charge on a debtor; or
- (2) receive money from or on behalf of a debtor for debt management services.

(b) A licensee may not impose charges or receive payment for debt management services until:

- (1) the licensee and the debtor have agreed upon a plan and have signed an agreement that complies with sections 8 and 9.5 of this chapter; and
- (2) at least one (1) payment has been made to a creditor under the plan.

All creditors must be notified of the debtor's and licensee's relationship.

(c) If a debtor assents to a plan, the licensee may charge the following:

- (1) A set up fee of not more than fifty dollars (\$50) for consultation, obtaining a credit report, and setting up an account. Acceptance of a plan payment by a creditor constitutes agreement by the creditor to the plan. A set up fee under this subdivision may not be collected until the debtor, or the licensee on behalf of the debtor, has made at least one (1) payment to a creditor under the plan.

(2) Subject to subsection (d), a monthly service fee of the lesser of the following:

- (A) Not more than fifteen percent (15%) of the amount the licensee receives from the contract debtor for payment to the contract debtor's creditors during the applicable month. However, if the amount calculated under this clause is less than five dollars (\$5) for a particular month, the licensee may charge a monthly service fee of five dollars (\$5) for that month.

(B) Seventy-five dollars (\$75).

The monthly service fee under this subdivision may be charged for any one (1) month or part of a month. The amount of a set up fee under subdivision (1) may not be included in the calculation of the monthly service fee.

(d) Upon cancellation by a contract debtor or termination of payments by a contract debtor, a licensee may withhold for the licensee's own benefit not more than one hundred dollars (\$100), which may be accrued as a close-out fee.

(e) A licensee may not charge a contract debtor more than one (1) set up fee or one (1) close-out fee unless the contract debtor leaves the services of the licensee for more than six (6) months.

(f) With respect to any additional charge not specifically provided for in this section, the licensee must submit a written explanation of the charge to the department indicating how the charge would be assessed and the value or benefit conferred on the contract debtor in connection with the charge. Supporting documents may be required by the department. The department shall determine whether the charge:

- (1) would be imposed in relation to some benefit conferred on the consumer; and
- (2) is reasonable in relation to the benefit conferred.

An additional charge is not permitted unless approved by the department.

(g) For purposes of this chapter, the terms of an agreement commence on the date on which the agreement is made.

(h) A licensee may assess a charge of not more than twenty-five dollars (\$25) for each return by a bank or other depository institution of a dishonored check, negotiable order of withdrawal, or share draft issued by the contract debtor.

(i) Any fee charged by the licensee to the debtor under this section for services rendered by the licensee, other than the fees described under subsection (e), is not considered a debt owed by the debtor to the licensee.

As added by P.L.35-2010, SEC.128. Amended by P.L.89-2011, SEC.42; P.L.6-2012, SEC.194; P.L.27-2012, SEC.74; P.L.216-2013, SEC.27; P.L.186-2015, SEC.34.

IC 28-1-29-8.6 Repealed

As added by P.L.35-2010, SEC.129. Repealed by P.L.216-2013, SEC.28.

IC 28-1-29-8.8 Debtor's failure to make payment; cancellation of agreement; letter of continuation; return of money to contract debtor

Sec. 8.8. (a) If a contract debtor fails to make a payment to a licensee within ninety (90) days after the date a payment is due under an agreement, the agreement may be considered canceled by the licensee unless:

- (1) one (1) or more creditors included in the contract debtor's plan object to the termination; or
- (2) subject to subsection (b), the contract debtor files a letter of continuation.

(b) A contract debtor may file a letter of continuation of an agreement even if the contract debtor did not make a payment within ninety (90) days after a payment was due. All of the following apply to a letter of continuation of an agreement:

- (1) A contract debtor may file only one (1) letter of continuation with a licensee for each twelve (12) month period the agreement is in effect.
- (2) A letter of continuation must contain a detailed explanation of the reason or reasons for the missed payment.
- (3) If an agreement for which a letter of continuation that meets the requirements of this subsection is filed, the agreement remains in effect and subject to cancellation for any future failure to make a payment as described in this section.
- (4) A contract debtor may not file a letter of continuation with a licensee during the first six (6) months an agreement is in effect.
- (5) If one (1) or more creditors included in the contract debtor's plan agree to continue the plan based on the explanation provided under subdivision (2), the contract debtor and the licensee shall modify the agreement then in effect between the contract debtor and the licensee to reflect the changes agreed to under the letter of continuation.

(c) If a licensee or a contract debtor terminates an agreement, the licensee shall immediately return to the contract debtor any money of the contract debtor held in trust for the benefit of the contract debtor.

As added by P.L.35-2010, SEC.130. Amended by P.L.216-2013, SEC.29.

IC 28-1-29-9 Trust account; separate account for Indiana contract debtors required; commingling with funds of nonresidents with approval of director; requirements and restrictions; required balance; reconciliation procedures; embezzlement; relocating account; signatories; monthly accountings; completion or termination of contract

Sec. 9. (a) All money paid to a licensee by or on behalf of an Indiana contract debtor for distribution to creditors under a plan shall be held in trust in a separate account maintained specifically for the benefit of the licensee's Indiana contract debtors. However, as an alternative to maintaining a separate trust account specifically for the benefit of the licensee's Indiana contract debtors, a licensee may submit a request to the director for approval to maintain a trust account that holds both money paid to the licensee by or on behalf of Indiana contract debtors and money paid to the licensee by or on behalf of contract debtors who do not reside in Indiana. The request must include documentation of the licensee's account reconciliation procedures sufficient to demonstrate to the director that the licensee will be able to:

- (1) comply with the reconciliation requirements set forth in subsection (e) with respect to each Indiana contract debtor whose money is held in the account; and
- (2) accurately determine the appropriate surety bond level under section 6(d) of this chapter at the time of each renewal of the licensee's license under this chapter.

Upon approval by the director of a request described in this subsection, the licensee shall maintain the documentation described in subdivisions (1) and (2) for review by department examiners during the course of the department's routine examinations under this chapter. Before the close of the same banking day that funds are received from an Indiana contract

debtor, the licensee shall deposit the money in the trust account required under this section.

(b) A licensee shall do the following:

(1) Maintain separate records of account for each contract debtor to whom the licensee is furnishing debt management services in Indiana.

(2) Disburse money paid by or on behalf of a contract debtor to creditors of the contract debtor as disclosed in the agreement between the licensee and the contract debtor.

(3) Make remittances not later than thirty (30) days after initial receipt of funds from a contract debtor. After the initial receipt of funds, remittances, less fees and costs, shall be made not later than thirty (30) days after receipt of funds, unless the reasonable payment of one (1) or more of the contract debtor's obligations requires that the funds be held for a longer period to accumulate a sum certain. For purposes of this section, the close-out fee set forth in section 8.3(d) of this chapter is not considered an obligation of the contract debtor.

(4) Retain for charges in the trust account required under this section an amount less than or equal to the sum of one (1) month's fees for the licensee's Indiana contract debtors whose money is held in the account, as permitted by section 8.3(c)(2) of this chapter, plus a close-out fee, as permitted by section 8.3(d) of this chapter, for each of the licensee's Indiana contract debtors whose money is held in the account, unless a greater amount is approved in writing by the department.

(5) Promptly:

(A) correct any payments on behalf of a contract debtor that are not made or that are misdirected as a result of an error by the licensee or other person in control of the trust account; and

(B) reimburse the contract debtor for any costs or fees imposed by a creditor as a result of the failure to pay or misdirection.

(c) A licensee may not commingle the licensee's own funds with money in the trust account established under this section for the benefit of the licensee's Indiana contract debtors.

(d) The trust account required under this section must at all times have a cash balance equal to at least the sum of the balances of each individual account maintained for each Indiana contract debtor whose money is held in the trust account.

(e) The licensee shall reconcile the trust account required under this section at least every thirty (30) days after receipt of the bank statement. The reconciliation must compare the cash balance in the trust account for all the licensee's Indiana contract debtors whose money is held in the account with the sum of the balances in each of those Indiana contract debtor's individual accounts. If the licensee or the licensee's designee has more than one (1) trust account under this section, each trust account must be individually reconciled. If the cash balance held in a trust account for the benefit of the licensee's Indiana contract debtors reflects a shortage when compared with the sum of the balances in each of those Indiana contract debtor's individual accounts, the licensee shall immediately provide written notice to the department of that fact and of any remedial action taken by the licensee. If the cash balance held in a trust account for the benefit of the licensee's Indiana contract debtors reflects a surplus when compared with the sum of the balances in each of those Indiana contract debtor's individual accounts, the licensee shall attempt to remedy the surplus and shall retain, for review by department examiners, documentation of the actions taken.

(f) If a licensee or a licensee's employee discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the licensee or the licensee's employee shall immediately notify the department in writing. Unless the department by regulation, rule, policy, or guidance provides otherwise, the licensee shall give notice to the department describing the remedial action taken or to be taken not later than five (5) days after the licensee or the licensee's employee discovers, or has a reasonable suspicion of, the embezzlement or other unlawful appropriation.

(g) If a contract debtor terminates an agreement or it becomes reasonably apparent to a

licensee that a plan has failed, the licensee shall, not later than fifteen (15) days after the effective date of the termination of the agreement or the date on which it becomes apparent to the licensee that the plan has failed, as applicable, refund to the contract debtor all money paid by or on behalf of the contract debtor that has not been paid to creditors less the fee that is payable to the licensee under section 8.3(d) of this chapter.

(h) Before relocating a trust account from one (1) bank to another, a licensee shall inform the department of the name, business address, and telephone number of the new bank. As soon as practicable, the licensee shall inform the department of the account number of the trust account at the new bank.

(i) Before adding or replacing any signatory on the trust account required under this section, the licensee shall:

- (1) ensure that the new signatory is qualified based on a background check consistent with section 3(c) of this chapter; and
- (2) maintain, for review by department examiners, documentation of the background check conducted.

(j) At least once each month while an agreement between a licensee and a contract debtor is in effect, the licensee shall render to the contract debtor an accounting statement that includes the following:

(1) The following information with respect to the month for which the accounting statement is prepared:

- (A) The total amount received from the contract debtor.
- (B) The total amount paid to each creditor on behalf of the contract debtor.
- (C) The amount of any charges deducted by the licensee.
- (D) Any amount held in reserve on behalf of the contract debtor.

(2) A statement that the contract debtor's plan is regulated by the department, along with the department's contact information, including the department's address, Internet web site address, and toll free telephone number.

A licensee shall also provide an accounting statement described in this subsection to a contract debtor not later than seven (7) days after written demand by the contract debtor for such a statement. However, the licensee is not required to provide more than three (3) such requested accountings per six (6) month period.

(k) Upon the completion or termination of a contract between a licensee and a contract debtor, the licensee shall provide to the contract debtor a statement:

- (1) indicating that the licensee no longer holds funds in trust for the contract debtor; and
- (2) listing the name and address of:
 - (A) any creditors paid in full; and
 - (B) any creditors remaining unpaid.

Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6. As amended by P.L.196-1996, SEC.4; P.L.213-2007, SEC.49; P.L.217-2007, SEC.47; P.L.35-2010, SEC.131; P.L.89-2011, SEC.43; P.L.6-2012, SEC.195; P.L.27-2012, SEC.75; P.L.216-2013, SEC.30.

IC 28-1-29-9.5 Prohibited acts; unauthorized practice of law; compensation prohibited

Sec. 9.5. (a) A licensee may not, directly or indirectly, do any of the following:

- (1) Misappropriate or misapply money held in trust.
- (2) Exercise or attempt to exercise a power of attorney after a contract debtor has terminated an agreement.
- (3) Initiate a transfer to or from a contract debtor's account at a bank or with another person unless the transfer is:
 - (A) a return of money to the contract debtor; or
 - (B) before the termination of an agreement, properly authorized by the agreement

and this chapter, and for:

- (i) payment to one (1) or more creditors under an agreement; or
- (ii) payment of a fee.

(4) Offer a gift or bonus, premium, reward, or other compensation to a debtor for executing an agreement.

(5) Offer, pay, or give:

- (A) a gift or bonus;
- (B) a premium;
- (C) a reward; or
- (D) other compensation;

to a lead generator or another person for referring a prospective customer if the person making the referral has a financial interest in the outcome of debt management services provided to the customer.

(6) Receive a bonus, a commission, or other benefit for referring a debtor to a person.

(7) Structure a plan in a manner that would result in a negative amortization of any of a debtor's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon payment of the principal amount of the debt.

(8) Compensate the licensee's employees on the basis of a formula that incorporates the number of debtors the employee induces to enter into agreements. It is not a violation of this subsection for a licensee to use the number of successfully completed debt management plans as a criterion for compensation for the licensee's employees.

(9) Settle a debt or lead a contract debtor to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the contract debtor receives a certification by the creditor that the payment is in full settlement of the debt.

(10) Make a representation that:

- (A) the licensee will furnish money to pay bills or prevent attachments;
- (B) payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness; or
- (C) participation in a plan will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment.

(11) Misrepresent that the licensee is authorized or competent to furnish legal advice or perform legal services.

(12) Represent in the licensee's agreements, disclosures required by this chapter, advertisements, or Internet web site that the licensee is:

- (A) a nonprofit entity unless the licensee is organized and properly operating as a nonprofit entity under the law of the state in which the entity was formed; or
- (B) a tax exempt entity unless the entity has received certification of tax exempt status from the Internal Revenue Service and is properly operating as a nonprofit entity under the law of the state in which the entity was formed.

(13) Take a confession of judgment or power of attorney to confess judgment against a contract debtor.

(14) Employ an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information.

(b) If a licensee furnishes debt management services to a debtor, the licensee may not, directly or indirectly, do any of the following:

(1) Purchase a debt or obligation of the debtor.

(2) Receive from or on behalf of the debtor:

- (A) a promissory note or other negotiable instrument other than a check or a demand draft; or
- (B) a postdated check or demand draft.

(3) Lend money or provide credit to the debtor.

(4) Obtain a mortgage or other security interest from any person in connection with the services provided to the debtor.

(5) Except as permitted by federal law, disclose the identity or identifying information of the debtor or the identity of the debtor's creditors, except:

- (A) to the department, upon proper demand;
- (B) to a creditor of the debtor, to the extent necessary to secure the cooperation of the creditor in a plan; or
- (C) to the extent necessary to administer the plan.

(6) Charge the debtor for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt management services or educational services concerning personal finance, except as permitted under section 8(j) of this chapter.

(7) Furnish legal advice or perform legal services unless the person furnishing the advice or performing the services is licensed to practice law.

(c) This chapter does not authorize any person to engage in the practice of law.

(d) A licensee may not receive a gift, bonus, premium, reward, or other compensation, directly or indirectly, for advising, arranging, or assisting a debtor in connection with obtaining an extension of credit or other service from a lender or service provider.

As added by P.L.35-2010, SEC.132. Amended by P.L.216-2013, SEC.31.

IC 28-1-29-9.7 Advertising

Sec. 9.7. A licensee:

- (1) may not use false, misleading, or deceptive advertising; and
- (2) shall meet the following conditions in advertising:
 - (A) An advertisement may not include a statement that states or implies that no financial problem is too great for the licensee to solve.
 - (B) An advertisement may not include a statement that states or implies that the licensee will use the licensee's own cash to pay the debtor's accounts.
 - (C) All advertisements must contain the statement "We do not lend money."
 - (D) All advertisements must contain the true name and address of the licensee.

As added by P.L.35-2010, SEC.133.

IC 28-1-29-10 Repealed

Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6. As amended by P.L.42-1993, SEC.55; P.L.10-2006, SEC.35 and P.L.57-2006, SEC.35; P.L.90-2008, SEC.32. Repealed by P.L.35-2010, SEC.209.

IC 28-1-29-10.5 Record keeping and retention; examinations and investigations; payment of costs; court order compelling compliance; confidentiality; department's investigatory and enforcement authority; cooperative regulatory agreements; examination of vendors

Sec. 10.5. (a) A licensee shall maintain in the licensee's business any books, accounts, and records that enable the department to determine whether the licensee is complying with this chapter. The books, accounts, and records shall be preserved for at least two (2) years after making the final entry of any agreement recorded in the books, accounts, and records. A licensee is subject to IC 28-1-2-30.5 with respect to any records maintained by the licensee.

(b) In administering this chapter and in order to determine whether this chapter is being complied with by a person engaging in acts subject to this chapter, the department may examine the records of a person and may make investigations of a person as necessary to determine compliance. Records subject to examination under this section include the following:

- (1) Training, operating, and policy manuals.
- (2) Minutes of:
 - (A) management meetings; and

(B) other meetings.

(3) Other records that the department determines are necessary to perform the department's investigation or examination.

(c) The department may also administer oaths or affirmations, subpoena witnesses, compel a witness's attendance, adduce evidence, and require the production of any matter that is relevant to the investigation. The department shall determine whether:

(1) the records maintained are sufficient; and

(2) the person has made the required information reasonably available.

(d) If the department:

(1) investigates; or

(2) examines the books and records of;

a person that is subject to this chapter, the person shall pay all reasonably incurred costs of the investigation or examination in accordance with the fee schedule adopted by the department under IC 28-11-3-5. Any costs required to be paid under this subsection shall be paid not later than sixty (60) days after the person receives a notice from the department of the costs being assessed. The department may impose a fee, in an amount fixed by the department under IC 28-11-3-5, for each day that the assessed costs are not paid, beginning on the first day after the sixty (60) day period described in this subsection.

(e) The department shall be given free access to the records wherever located. If the person's records are located outside Indiana, at the discretion of the director, the records shall be made available to the department at a convenient location within Indiana, or the person shall pay the reasonable and necessary expenses for the department or the department's representative to examine the records where the records are maintained.

(f) If a person fails to:

(1) obey a subpoena without a lawful excuse; or

(2) give testimony;

the department may apply to a civil court for an order compelling compliance.

(g) The department shall not make public the name or identity of a person whose acts or conduct the department investigates under this section or the facts disclosed in the investigation. However, this subsection does not apply to disclosures of enforcement proceedings under this chapter.

(h) To discover violations of this chapter or to secure information necessary for the enforcement of this chapter, the department may investigate any:

(1) licensee; or

(2) person that the department suspects to be operating:

(A) without a license, when a license is required under this chapter; or

(B) otherwise in violation of this chapter.

The department has all investigatory and enforcement authority under this chapter that the department has under IC 28-11 with respect to financial institutions. If the department conducts an investigation under this section, the licensee or other person investigated shall pay all reasonably incurred costs of the investigation in accordance with the fee schedule adopted under IC 28-11-3-5.

(i) The department may:

(1) enter into a cooperative arrangement with another federal or state agency having authority over debt management companies; and

(2) exchange with the agency information about a person subject to this chapter, including information obtained during an examination of the person.

(j) If a person doing business as a debt management company contracts with an outside vendor to provide a service that would otherwise be undertaken internally by the person doing business as a debt management company and be subject to the department's routine examination procedures, the person that provides the service to the person doing business as a debt management company shall, at the request of the director, submit to an examination by the department. If the director determines that an examination under this subsection is

necessary or desirable, the examination may be made at the expense of the person to be examined. If the person to be examined under this subsection refuses to permit the examination to be made, the director may order any person doing business as a debt management company that receives services from the person refusing the examination to:

- (1) discontinue receiving one (1) or more services from the person refusing the examination; or
- (2) otherwise cease conducting business with the person refusing the examination.

As added by P.L.35-2010, SEC.134. Amended by P.L.137-2014, SEC.25; P.L.5-2015, SEC.61.

IC 28-1-29-11 Impounding books, records, and accounts

Sec. 11. Upon affidavit of any person, or other information that the licensee has failed to comply with the provisions of this chapter, and after a preliminary investigation indicates probable cause that a violation has occurred, the department shall have authority to impound such books, records, and accounts as it deems necessary.

Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6. As amended by P.L.263-1985, SEC.108; P.L.42-1993, SEC.56.

IC 28-1-29-12 Repealed

Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6. As amended by Acts 1981, P.L.256, SEC.5; P.L.42-1993, SEC.57; P.L.213-2007, SEC.50; P.L.217-2007, SEC.48; P.L.90-2008, SEC.33. Repealed by P.L.35-2010, SEC.209.

IC 28-1-29-13 Enforcement by the department; civil penalties; department's recovery of costs; factors for determining amount of civil penalty; violation a Class A misdemeanor

Sec. 13. (a) The department may enforce this chapter and rules adopted under this chapter by taking one (1) or more of the following actions:

- (1) Order a debt management company or a director, employee, or other agent of a debt management company to cease and desist from any violations.
- (2) Order a debt management company or a person that has caused a violation to correct the violation, including making restitution of money or property to a person aggrieved by a violation.
- (3) Prosecute a civil action to:
 - (A) enforce an order;
 - (B) obtain restitution, an injunction, or other equitable relief; or
 - (C) accomplish both clauses (A) and (B).

(b) Subject to subsection (c), if the department determines, after notice and an opportunity to be heard, that a person has violated this chapter, the department may, in addition to or instead of all other remedies available under this section, impose upon the person a civil penalty not greater than ten thousand dollars (\$10,000) per violation.

(c) If a person violates or knowingly authorizes, directs, or aids in the violation of a final order issued under subsection (a)(1) or (a)(2), the department may impose a civil penalty of not more than twenty thousand dollars (\$20,000) for each violation.

(d) The department may maintain an action in any county to enforce this chapter.

(e) The department may recover the reasonable costs of enforcing this chapter under subsections (a) through (d), including attorney's fees.

(f) In determining the amount of a civil penalty to impose under subsection (b) or (c), the department shall consider:

- (1) the seriousness of the violation;
- (2) the good faith of the person who violated this chapter;
- (3) any previous violations by the person who violated this chapter;
- (4) the deleterious effect of the violation on the public;

- (5) the net worth of the person who violated this chapter; and
- (6) any other factor the department considers relevant to the determination of a civil penalty.

(g) In addition to the revocation provision of section 4 of this chapter, a person who violates section 3, 5, 6, 8, 8.3, 9, or 9.5 of this chapter commits a Class A misdemeanor, and the license of the licensee shall be revoked on the date of the conviction of an offense.

Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6. As amended by Acts 1978, P.L.2, SEC.2815; P.L.42-1993, SEC.58; P.L.35-2010, SEC.135; P.L.89-2011, SEC.44.

IC 28-1-29-14 Review of department decisions; applicability of laws governing administrative orders and procedures; venue

Sec. 14. Any applicant for a license aggrieved by a decision of the department pursuant to this chapter may file a petition for review as prescribed in IC 4-21.5. Except as otherwise provided, IC 4-21.5 applies to and governs all agency action taken by the department under this chapter. All proceedings for administrative review under IC 4-21.5-3 or judicial review under IC 4-21.5-5 shall be held in Marion County.

Formerly: Acts 1971, P.L.397, SEC.1; Acts 1972, P.L.10, SEC.6. As amended by P.L.7-1987, SEC.160; P.L.42-1993, SEC.59; P.L.35-2010, SEC.136.

IC 28-1-29-15 Providing materials and agreements electronically; consumer's consent required; disclosures through Internet web site; debtor's right to request written copy

Sec. 15. (a) As used in this section, "consumer" means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes.

(b) As used in this section, "federal act" means the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq., as amended).

(c) A licensee may satisfy the requirements of section 7.7, 8, or 9 of this chapter by means of the Internet or other electronic means if the licensee obtains a consumer's consent in the manner provided by Section 101(c)(1) of the federal act.

(d) The disclosures and materials required by section 7.7, 8, or 9 of this chapter shall be presented in a form that is capable of being accurately reproduced for later reference.

(e) With respect to disclosure by means of an Internet web site, the disclosure of the information required by section 7.7 of this chapter must appear on one (1) or more screens that:

- (1) contain no other information; and
- (2) the debtor must see before proceeding to assent to formation of an agreement.

(f) At the time of providing the materials and agreement required by sections 7.7, 8, and 9 of this chapter, a licensee shall inform the debtor that upon electronic, telephonic, or written request, the licensee shall:

- (1) send the debtor a written copy of the materials; and
- (2) comply with a request as provided in subsection (g).

(g) If a licensee is requested, after an agreement is completed or terminated, to send a written copy of the materials required by section 7.7, 8, or 9 of this chapter, the licensee shall send the materials at no charge to the debtor not later than three (3) business days after the request. However, the licensee is not required to comply with a request more than once per calendar month or if the licensee reasonably believes the request is made for purposes of harassment.

(h) A licensee that maintains an Internet web site shall disclose on the home page of the licensee's web site or on a page that is clearly and conspicuously connected to the home page by a link that clearly reveals the following:

- (1) The licensee's name and all names under which the licensee does business.
- (2) The licensee's principal business address, telephone number, and electronic mail address, if any.

(3) The names of the licensee's principal officers.

(i) A licensee may not terminate the licensee's agreement because a consumer who has consented to electronic communication in the manner provided by Section 101 of the federal act withdraws consent as provided in the federal act.

As added by P.L.35-2010, SEC.137.

IC 28-1-29-16 Disclosures and documents to be in English; translation required if another language used

Sec. 16. Unless the department provides otherwise in a rule, the disclosures and documents required by this chapter must be in English. If a licensee communicates with a debtor primarily in a language other than English, the licensee shall furnish a translation of the disclosures and documents required by this chapter from the other language into English.

As added by P.L.35-2010, SEC.138.

IC 28-1-29-17 Soliciting or accepting contributions from debtors prohibited

Sec. 17. Unless a fee is specifically authorized under the chapter, a licensee may not solicit or accept a voluntary contribution from a contract debtor for any service provided to the contract debtor.

As added by P.L.35-2010, SEC.139.

IC 28-1-29-18 Delegation of duties; liability of licensee; violations by lead generators

Sec. 18. (a) If a licensee delegates any of the licensee's duties or obligations under an agreement or this chapter to another person, including an independent contractor or a lead generator, the licensee is liable for any conduct of the person which, if done by the licensee, would violate the agreement or this chapter.

(b) A lead generator or another person that:

(1) provides services to or for a licensee; and

(2) violates this chapter;

commits a deceptive act that is actionable under IC 24-5-0.5 and subject to the penalties of IC 24-5-0.5.

As added by P.L.35-2010, SEC.140. Amended by P.L.216-2013, SEC.32.